WP(C) 4934/2006
BEFORE

THE HON'BLE MR. JUSTICE RANJAN GOGOI

All the writ petitions having raised common questions of law and facts on more or less identical facts have been heard together and are being disposed of by this common judgment and order.

2. I have heard Sri PK Goswami, Sri DK Misra, learned Senior Counsels and Sri UK Nair, learned counsel for the petitioners; Sri S.Saikia, learned Departmental Counsel and Sri AK Goswami, learned counsel for the Respondents 3, 4 and 5 in WP(C) No.246 of 2007. None has appeared on behalf of the Respondents 4 to 12 in the other writ petitions.

3. The writ petitioners are aggrieved by the proceedings of the selection held on 28.7.2006 for promotion to the post of Superintending Engineer in the Public Works Department. They, having been placed in positions, which would not warrant their promotions to the next higher post of Superintending Engineer, the petitioners, are aggrieved by the selections made as well as consequential promotions.

4. Promotion to the post of Superintending Engineer in the Department is required to be made under the Rules in force by application of the criteria of merit and suitability with due regard to seniority. Promotion from the post of Superintending Engineer to other higher posts are, however, required to be made by application of criteria of merit cum seniority. The meaning of the aforesaid two expressions was sought to be clarified by this Court in a judgment reported in (2003) 3 GLT page 369 (RAMENDRA CHANDRA KALITA AND OTHERS -VS.- STATE OF ASSAM AND OTHERS. Following the aforesaid judgment of this Court, an Office Memorandum dated 28.4.2003 was issued by the Department laying down the norms by which the aforesaid two criteria of promotion, spelt out by the Rules, are required to be applied. The details contained in the Office Memorandum dated 28.4.2003 need not detain the Court save and except that in so far as promotion to the post of Superintending Engineer is concerned, the Office Memorandum dated 28.4.2003 contemplates award of specific marks for the different gradings in the ACRs of the preceding five years and also for each completed year of service. In this manner the Office Memorandum seeks to achieve the desired fusion of merit and seniority which is inbuilt in the criteria of merit and suitability with due regard to seniority.

5. Another significant provision of the Office Memorandum dated 28.4.2003, that must be noticed at this stage, is the penultimate paragraph of the said Office Memorandum, which puts an embargo on the power of the Departmental Promotion Committee to independently assess the ACRs of an officer in order to determine his gradings for the purpose of award of marks in the selection.

6. The short case projected by four of the petitioners [WP(C) 4932, 4933, 4934 and 4935 of 2006] is that their record of service has been outstanding during the period under consideration. Out of the period of 5 years for which the ACRs of the petitioners are required to be taken into consideration, the petitioners have been graded as 'Outstanding' for the first three years. It is the petitioners' further case that for the remaining two years, though they were graded as 'Outstanding' by the Reporting and Reviewing Authorities, the said grading had been altered to one of 'Good' by the Accepting Authority. The grievance of the petitioner in the firth case, i.e., WP(C) No. 246 of 2007 is similar though confined to the ACR for the year 2004 which has been accepted as 'Good' though marked as 'Outstanding' by the Reporting and Reviewing Authority.

The petitioners contend that to the best of knowledge, the award of the grading of 'Outstanding' in the ACRs for the year ending 2004 and 2005 as recorded by the Reporting and Reviewing Authorities are based on details of their outstanding

performance, mentioned in the ACR form, which details have been totally ignored by the Accepting Authority while accepting the ACRs as 'Good' . The petitioners contend that it is on account of the aforesaid altered grading (Good), which has been referred to by the learned counsels as down grading , perhaps, in a liberal manner of expression, that their prospects of being included in Category-A of eligible Officers as per the Office Memorandum dated 28.4.2003 has been affected. It would be worthwhile to notice, at this stage, that under the Office Memorandum dated 28.4.2003 depending on the marks secured by a particular candidate, those securing beyond 21.96 marks are required to be graded in Category-A whereas those who have secured less than 21.96 but above 13.96 marks are to be categorized in Category-B. Officers in Category-A are to get precedence over those placed in Category-B whereas the order of arrangement of names in each category is to be as per the inter se seniority of officers concerned. The above grievance of the petitioners had led them to even label the action of the Accepting Authority as malafide, which, however, has been denied by the said authority.

7. In addition to the above arguments advanced on behalf of the petitioners, it has been further argued that this Court in its decision rendered in the case of BANIKANTA DAS AND OTHERS -VS. STATE OF ASSAM AND OTHERS, reported in (2007) 3 GLT 11 has taken the view that the penultimate paragraph in the Office Memorandum dated 28.4.2003 by which an embargo has been put on the power of the DPC to independently consider the ACR of the officers under consideration for promotion is not in tune with the requirements of law and, therefore, would require correction at the hands of the authority. Learned counsels, therefore, argue that the aforesaid embargo put by the Office Memorandum dated 28.4.2003 has come in the way of an objective consideration of their cases by the DPC thereby vitiating the final conclusion reached.

8. The records in original including the ACRs of the petitioners have been placed before the Court at the hearing. Opportunity of inspection of the said records was allowed to the learned counsels for the petitioners.

9. A perusal of the ACRs of the Tthree petitioners, i.e., Sri Nripendra Nath Deka, Sri Pradyut Kumar Choudhury and Sri Ranjeet Kumar Das [WP(C) 4932, 4933 and 4935 of 2006 would go to show that for the years ending 2004 and 2005 they were indeed graded by the authority as 'Outstanding' by the Reporting and the Reviewing authorities. The entries in different coloumns in the ACRs indicate the specific instances of outstanding work performed by the said petitioners, which had led the Reporting and the Reviewing Authorities to conclude that the grading of 'Outstanding' would be justified. What was revealed by a consideration of the records thereafter, at least, in the cases of the said 3 petitioners (Sri Nripendra Nath Deka, Sri Pradyut Kumar Choudhury and Sri Ranjeet Kumar Das) has left the Court distressed and shocked. In each of the cases of the said 3 petitioners the Accepting Authority had initially graded them as 'Very Good'. Even assuming that the said grading, which was lower than from what was recorded by the two primary authorities, is justified, perhaps, no prejudice would have been caused to the petitioners, as in that event also the said 3 petitioners would have earned sufficient marks to be included in Category-A. However, the Accepting Authority, thereafter, had sought to erase the word 'Very' from the word 'Very Good' leaving the word 'Good' as the finally accepted grading of the said petitioners. This was how the ACRs of the said petitioners were understood by the Departmental Promotion Committee and the award of marks on that basis had the affect of placing the said 3 petitioners in Category-B. Their inter se seniority in the said category, however, did not permit them to be promoted.
In the case of the petitioner, Sri Rabindra Nath Kalita [WP(C) No.4934/2007], what the Court has noticed, on a consideration of the ACRs of the said officer, is that for the year ending March, 2004 (14.7.2003 to 29.12.2003) the officer was graded as 'Outstanding' by the Reporting and Reviewing Authorities but the same was accepted as 'Good' by the Accepting Authority, who, however, did not indicate any reasons for the view taken. For the year ending March, 2005 the ACRs

of the said petitioner is in two parts, i.e., for the period from 1.4.2004 to 24.6.2004 and from 28.7.04 to 17.2.2005. The assessment of the ACRs of the petitioner in two parts was necessary as the Reporting Authorities under whom the petitioner had worked were different. In both parts of the ACR ending March, 2005, the Reporting and the Reviewing Authorities after assessing the work of the petitioner categorized him as 'Outstanding'. The said details of the works performed by the petitioner in the two parts of the ACR are substantially the same. However, the Accepting Authority after recording that there is no outstanding performance to justify the grading of 'Outstanding' lowered the said grading to 'Very Good' in the ACR for the period 1.4.2004 to 24.6.2004 but surprisingly to 'Good' for the period 28.7.04 to 17,2.05. As the said latter period was of longer duration and the former period was less than 90 days, the ACR for 2004 was understood as 'Good'.

In so far as the petitioner Sri Raj Chakravarty [WP(C) 246/2007] is concerned, in the ACR for the year ending 2004, the officer was graded as 'Outstanding' by the Reporting and Reviewing Authorities after a detailed narration and consideration of the works performed. This was on 31.12.2003. However, the Accepting Authority accepted the said ACR as 'Good' with the following endorsement 'Accepted Good'. No reason or any basis is recorded for the said conclusion. The endorsement of the Accepting Authority bears the date '30.8'; presumably the calendar year is 2004. The time lag between the two dates, i.e., the date of the report of the Reviewing Authority, i.e., 31.12.2003 and that of the Accepting Authority is too significant a fact to be ignored particularly in the context of the provisions of the Confidential Rolls Rules, 1990, which contemplate a period of one month as sufficient for the Accepting Authority to complete the assessment.

10. In so far as the 3 petitioners in WP(C) Nos. 4933, 4932 and 4935 of 2006 are concerned (Sri Nripendra Nath Deka, Sri Pradyut Kumar Choudhury and Sri Ranjeet Kumar Das), the matter could have ended in so far as they are concerned by directing restoration of the initial grading accepted by the authority ,i.e., 'Very Good' in view of the clear interpretations made. However, the petitioners having also raised a question with regard to the correct manner of exercise of power by the Accepting Officer, the Court has deemed it necessary to answer the said question, as such an exercise would have the effect of laying down the parameters of exercise of powers by holders of public office. In any event, the said question is required to be answered by the Court to fully deal with the grievances expressed by the writ petitioner Sri Rabindra Nath Kalita in WP(C) No.4934/2006 and the petitioner Sri Raj Chakraborty in WP(C) No.246/2007 .

11. The role and responsibility of each of the authorities involved in preparation and finalization of the Annual Confidential Reports of a subordinate official is of paramount significance, not only for the officer under consideration but also for the efficiency of the administrative process and the morale of the personnel engaged therein. It is not a task to be performed mechanically but with the awareness of higher degree of responsibility that goes with it. That is why the Apex Court has held that the officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately &. [State of U.P. -Versus- Yamuna Shankar Mishra and another, reported in (1997) 4 SCC 7]. The above views find mention in several other earlier as well as subsequent pronouncements, details of which, would only lengthen the present composition and, therefore, is being avoided.

12. The Apex Court in the case of UP JAL NIGAM AND OTHERS -VS.- PRABHAT CHANDRA JAIN AND OTHERS, reported in (1996) 2 SCC 363 has taken the view that the down grading of ACR of an Officer, though may not be an adverse action, may have the potential of affecting his service prospects. Therefore, it is necessary to communicate an 'advisory' to the concerned office and also record the reasons for the view taken in the personal file of the officer concerned. While it is correct that the Apex Court in UP Jal Nigam (supra) had laid down the afore

said law in the context of down grading of ACR of one year as against a previous year, there is no reason why the said wholesome principle should not be applied to the remarks in the ACR as made by different authorities in any particular year. This is precisely the extension that has been made by this Court in the case of DONATUS ENGZANANG -VERSUS - STATE OF MIZORAM AND OTHERS reported in 2000 (1) GLT page 501.

13. From the above analysis it is clear and evident that the Apex Court as well as this Court has insisted that the down grading of ACR of an officer, which necessarily has to be for good and sufficient reasons, the same must find manifestation in the personal file of the officer. Such a course of action is beneficial, inasmuch as, it does away with the possibility of exercise of arbitrary powers besides enabling the Courts, in cases where challenges are made against such actions, to scrutinize the validity thereof. In all the cases under consideration the Accepting Authority had awarded a lower/lesser grading than what was done by the Reporting and the Reviewing Authorities. The Accepting Authority, undoubtedly, was empowered to do so but the exercise of the said power was contingent on a satisfaction to be recorded that the record of service of the officer concerned did justify such a course of action. In the present cases, a perusal of the records in original placed before the Court does not indicate that any reason whatsoever has been recorded by the Accepting Authority as to why the petitioners should be awarded a lower grading and also as to why on the materials recorded and relied on by the Reporting and Reviewing Authorities the award of grading of 'Outstanding' was not justified. Such a manner of exercise of power cannot be said to be consistent with law laid down by the Apex Court.

Specifically in the case of the petitioner, Sri Rabindra Nath Kalita, [WP(C) 4934/2006] in the ACR of both the parts for the year ending 2005 the Reporting and Reviewing Authorities had recorded and relied upon the same items of work performed to come to the conclusion that the officer deserved to be graded as 'Outstanding'. Yet, the Accepting Authority had graded him as 'Good' for one period and 'Very Good' for the second period without indicating, in any manner, how the two different conclusions could be reached on the same materials. The Court, therefore, will have to hold that the necessary objective and dispassionate consideration that was required in arriving at the satisfaction recorded is wholly absent.

14. The net result of the above discussion is that the grading awarded by the Accepting Authority in the case of the petitioners in question, which constitutes the final grading of the officers, cannot be accepted by the Court as being in conformity with the requirements of the law laid down by the Apex Court as well as the provisions of Rule 7 of the Assam services (Confidential Rolls) Rules, 1990. The exercise of power in the cases under consideration is in apparent breach of the high public responsibility and trust reposed in the Accepting Authority. Consideration of the ACRs of the petitioners by the Departmental Promotion Committee, therefore, has vitiated its conclusions at least in respect of the petitioners. In such an event, ordinarily and in the normal course, the Court would have sent the matter back to the Accepting Authority to make a de novo exercise and thereafter to the Departmental Promotion Committee. But the Court is informed that the Accepting Authority in respect of the ACRs of the respective years has, in the meantime, retired. That being so, under Rule 8(2)(iii), the remarks of the Reviewing Officer will have to be treated as final. If the grades awarded by the Reviewing Officer to each of the petitioners in the ACRs for the year ending 2004 and 2005 are to be taken into account, as it has to be under the Rules in force It is clear to the Court from the proceedings of the Departmental Promotion Committee, as placed before it, that the petitioners, on due and proper calculation, would come in Category-A as visualized by the Office Memorandum dated 28.4.2003. The Court has also been informed that in WP(C) Nos. 4933/2006, 4932/2006, 4934/2006 and 4935/2006 interim orders have been passed directing that four posts of Superintendenting Engineer should be kept vacant to abide by the decision of the Court. The Respondent authorities in each of the cases, theref

ore, will now be required to re-assess the cases of the officers (petitioners) in the light of the directions contained in the present order and thereafter, if they are found fit and eligible for promotion, to grant such promotion to them in the posts of Superintending Engineer from such dates that promotions were made pursuant to the recommendations of the Selection Committee dated 28.7.2006. If required, naturally, the promotion of such of the private Respondents as may be called for, will have to be disturbed. The competent authority in the Department is directed to initiate the required process in terms of the present order and complete the same within a period of 90 (ninety) days from date of receipt of a copy of this order.

All the Writ Petitions are allowed as indicated above.